

In the Matter of Merchant Mariner's Document No. Z-798622
Issued to: S. L. JOHNSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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S. L. JOHNSON

In the Matter of
Merchant Mariner's Document No. Z-798622
Issued to: S. L. JOHNSON

Merchant Mariner's Document No. Z-510876-D1
Issued to: JOHN L. JACKSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 August, 1952, an Examiner of the United States Coast Guard at Portland, Oregon, suspended Merchant Mariners' Documents Nos. Z-798622 and Z-510876-D1 issued to S. L. Johnson and John L. Jackson, respectively, upon finding them guilty of inattention to duty based upon similar specifications alleging in substance that while serving as members of the Stewards Department on board the American SS AUGUSTIN DALY under authority of the document above described, they "on or about 12 June, 1952, while said vessel was anchored off Sokcho-Ri, Korea, and while said vessel was experiencing a fire on board and following two distinct soundings of the vessel's general alarm, wilfully departed from the vessel, thereby failing to man your fire station. Such failure on your part placed the vessel, crew and cargo in jeopardy."

At the time of service of the charge and specification, Appellants were given a full explanation of the nature of the proceedings and the rights to which they were entitled. Since neither Appellant put in an appearance, the hearing was held in absentia and the Examiner entered pleas of "not guilty" on behalf of the persons charged.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence testimony which had been taken at a hearing on the previous day concerning this same incident, and excerpts from the Shipping Articles of the AUGUSTIN DALY for a voyage from 25 February, 1952, to 13 August, 1952.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charges had been proved by proof of the specifications and entered orders suspending Appellant's Merchant Mariners' Documents Nos. Z-798622 and Z-510876-D1, and all other licenses, certificates of service and documents issued to Appellants by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that Appellants were tried in absentia and did not have an opportunity to present a defense; the evidence does not support the findings; the decision is not supported by the findings; and the decision and findings are contrary to law.

APPEARANCES: Messrs. Gladstein, Andersen and Leonard of San Francisco, California, by Allan Brotsky, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 12 June, 1952, Appellants were serving as members of the Stewards Department on

board the American SS AUGUSTIN DALY and acting under authority of their Merchant Mariners' Documents Nos. Z-798622 and Z-510876-D1. At about 0600 on this date, there was a fire aboard the AUGUSTIN DALY caused by four drums of gasoline dropping from a cargo boom onto the deck. The fire alarm was sounded and the fire was extinguished. Although no shore leave had been granted, several men returned to the ship after the fire had been put out.

There is no record of prior disciplinary action having been taken against either one of the Appellants.

OPINION

The appeal is sustained on the ground that the evidence does not support the findings. The record is absolutely devoid of any evidence that either of the Appellants departed from the ship during the fire, that they did or did not man their assigned fire stations, or that they returned on board after the fire had been extinguished. Hence, the Investigating Officer did not present any evidence in support of the alleged offense and the Examiner's conclusion is commensurately without support.

ORDER

The orders of the Examiner dated at Portland, Oregon, on 19 August, 1952, and directed against Merchant Mariners' Documents Nos. Z-798622 and Z-510876-D1, are REVERSED and the cases REMANDED with directions to DISMISS the charges and specifications against Appellants herein unless evidence supporting the allegations is produced within a reasonable time.

REVERSED and REMANDED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 30th day of January, 1953.